

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DARBY INDUSTRIES, INC.

Plaintiff,

v.

**B. ERICKSON MANUFACTURING
LTD. d/b/a ERICKSON
MANUFACTURING**

Defendant.

CIVIL ACTION NO. _____

**COMPLAINT FOR PATENT
INFRINGEMENT**

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Darby Industries, Inc. ("Darby"), by and through its undersigned counsel, bring this complaint against defendant B. Erickson Manufacturing Ltd. d/b/a Erickson Manufacturing ("Defendant" or "Erickson"), alleging as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the patent laws of the United States, 35 U.S.C. §§ 1 *et. seq.* and in particular §§ 271 and 281-285.
2. The Court has original jurisdiction over this patent infringement action pursuant to 28 U.S.C. §§ 1331 & 1338(a).
3. Plaintiff Darby is a corporation existing under and by the virtue of the laws of the Commonwealth of Pennsylvania with principal offices located at RR1, Box 311, Falls, Pennsylvania 18615.

4. Upon information and belief, defendant Erickson is a corporation existing under and by the virtue of the laws of the State of Michigan with principal offices located at 6317 King Road, Marine City, MI 48039.

5. Upon information and belief, at all times material to this Complaint, Erickson has engaged in business in Pennsylvania.

JURISDICTION AND VENUE

6. This Court has personal jurisdiction over defendant Erickson because, on information and belief, Erickson has committed, and continues to commit, acts of patent infringement in this judicial district and elsewhere.

7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b) & 1400(b) because, on information and belief, Defendant has committed acts of patent infringement in this judicial district.

FACTS

8. On September 14, 1999, the United States Patent and Trademark Office duly and legally issued United States Patent Number 5,950,890 in the name of Kenneth S. Darby and entitled Combination Roof or Bed Height Load Support (hereafter "Patent" or "890 Patent"). A copy of the '890 Patent is attached hereto and incorporated by reference as Exhibit A, as if fully set forth herein.

9. Through assignment Darby is the owner of all rights, title, and interest in the '890 Patent, including all rights to pursue and collect damages for past infringement of the claims of the '890 Patent.

10. The '890 Patent is presumed valid.

COUNT I- INFRINGEMENT OF U.S. PATENT NO. 5,950,890

11. Darby incorporates by reference each of the allegations in paragraphs 1-10 above as if fully set forth herein and further alleges as follows:

12. Defendant Erickson, directly or through intermediaries, unlawfully and without authorization has in the past, and continues to use, import, sell and offer for sale truck bed extenders which are covered by one or more claims of the '890 Patent, which extenders are not a staple article or commodity of commerce suitable for substantial non-infringing use, and are especially made or especially adapted for use in an infringement.

13. Erickson has profited through infringement of Darby's 890 patent.

14. Erickson has infringed one or more of the claims of the '890 Patent, and unless enjoined, will continue to do so by making, using, offering for sale, selling and importing the BIG BED[®] JUNIOR (Pin 07605) bed and load extender that infringes the claims of the '890 Patent.

15. Darby has been damaged by Erickson's unlawful infringement of the claims of the '890 Patent and will continue to suffer additional irreparable damage

and impairment of the value of its patent rights unless Erickson is enjoined from continuing to infringe the claims of the '890 Patent.

16. Darby is entitled to recover damages from Erickson to compensate for Defendant's unlawful infringement.

17. Defendants were notified of the '890 patent at least since the time of service of this complaint. Upon information and belief, any infringement since that notification has been willful and deliberate, entitling Darby to enhanced damages and reasonable attorney's fees and costs.

18. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Darby respectfully requests a trial by jury of all issues properly triable by jury.

PRAYER FOR RELIEF

WHEREFORE, plaintiff Darby Industries, Inc. prays for judgment against defendant Erickson Manufacturing Ltd as follows:

1. For a judgment declaring that Defendant has infringed on Darby's 890 Patent;

2. For an order preliminarily and permanently enjoining Defendant, its officers, directors, employees, agents, and all person in active concert with them, from further acts of infringement of the claims of the '890 Patent;

3. For a judgment awarding all damages suffered by Darby through Defendant's infringement of the claims of the Patent;

4. For a judgment declaring that Defendants' infringement of the Darby 890 Patent has been willful and deliberate;

5. For a judgment awarding Darby treble damages and pre-judgment interest under 35 U.S.C. §284 as a result of Defendant's willful and deliberate infringement of the Darby 890 Patent;

6. An accounting of defendant's gross and net profits from infringement of the patent;

7. For a grant of a Preliminary and permanent injunction enjoining the Defendant and all those in active concert therewith from further acts of patent infringement;

8. For a judgment declaring that this case is exceptional and awarding Darby its expenses, costs and attorney's fees in accordance with 35 U.S.C. §284 and §285 and Rule 54(d) of the Federal Rules of Civil Procedure; and

9. For such other relief as the court deems just and proper.

DATED: September 28, 2016

Respectfully submitted,

/s/Sarah C. Yerger

Sarah C. Yerger (PA 70357)
POST & SCHELL PC
17 N. 2nd St., 12th Floor
Harrisburg, PA 17101
Telephone: (717) 612-6030
Facsimile: (717) 731-1985
Email: SYerger@PostSchell.com

	<p><u>Of Counsel – To Be Admitted</u> Susan D. Pitchford (<i>pro hac vice to be filed</i>) Chernoff Vilhauer LLP 111 SW Columbia Street, Suite 725 Portland, OR 97201 Telephone: (503) 227-5631 Facsimile: (503) 228-4373 Email: sdp@chernofflaw.com</p> <p><i>Attorneys for Plaintiff</i> <i>Darby Industries, Inc.</i></p>
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